

Exhibit A:

Proposed Rule Changes

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 23

HAZARDOUS WASTE MANAGEMENT

**Submitted to the Pollution Control and Ecology
Commission in September, 2004**

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STANDARDS FOR UNIVERSAL WASTE MANAGEMENT**

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Provisions of APC&EC Regulation No. 23 (Hazardous Waste Management), dated October 24, 2003, are amended as itemized below:

1. The definition of “universal waste” at **Section 260.10** is revised to add new subparagraph (5) as follows:

§ 260.10 Definitions.

“Universal Waste” means any of the following hazardous wastes that are managed under the universal waste requirements of Section 273 of this regulation:

- (1) Batteries as described in § 273.2 of this regulation;
- (2) Pesticides as described in § 273.3 of this regulation;
- (3) Thermostats as described in § 273.4 of this regulation; ~~and~~
- (4) Lamps as described in § 273.5 of this regulation; and
- (5) Consumer electronic items as described in § 273.6 of this regulation.

SECTION 261 — IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

§ 261.5 [Amended]

2. **Section 261.5(j)** is amended by removing both phrases, “if it is destined to be burned for energy recovery.”

3. **Section 261.9** is amended to add new subparagraph (e) as follows:

§ 261.9 Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under Sections 262 through 270 of this regulation except as specified in Section 273 of this regulation and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under Section 273:

- (a) Batteries as described in § 273.2;
- (b) Pesticides as described in § 273.3 of this regulation;
- (c) Thermostats as described in § 273.4 of this regulation; ~~and~~
- (d) Lamps as described in § 273.5 of this regulation; and
- (e) Consumer electronic items (“E-wastes”) as described in § 273.6 of this regulation.

SECTION 262 — STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

4. **Section 262.13(f)** is amended to read as follows:

§ 262.13 State Requirements for Transportation of Waste from Generators of over 100 kgs per Month.

* * * * *

(f) A TSDf may not accept hazardous waste without a generator EPA ~~or PCB~~ identification number on the manifest, unless specific prior authorization has been obtained from ~~this~~ the Department.

* * * * *

SECTION 264 — STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. **Section 264.140(b)** is revised by amending subparagraph (2) and adding new subparagraphs (5) and (6) as follows:

§ 264.140 Applicability.

* * * * *

(b) The requirements of §§ 264.144 and 264.145 apply only to owners and operators of:

(1) Disposal facilities,

(2) Piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §§ 264.228; and 264.258;

(3) Tank systems that are required under § 264.197 to meet the requirements for landfills.

(4) Containment buildings that are required under § 264.1102 to meet the requirements for landfills.

(5) Open burn/open detonation units where soil and/or groundwater contamination has been identified as a result of operation of the unit.

6. **Section 264.141(g)** is amended to add a definition for *captive insurance* as follows:

§ 264.141 Definitions of terms as used in this Subsection.

* * * * *

(g) In the liability insurance requirements the terms “bodily injury” and “property damage” shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

* * * * *

“Captive insurance” means insurance for which the insurer underwrites insurance policies solely for its parent corporation or for other affiliates controlled by its parent.

* * * * *

7. **Section 264.143(e)** and **(f)(3)** and **(5)** are revised to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

e) Closure insurance. (1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Director. An owner or operator of a new facility must submit the certificate of insurance and a copy of the insurance policy to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be 1) licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in~~ one or more States as recognized by the Arkansas Insurance Department; and 2) have a current rating of AAA, AA, or A as rated by Standard & Poor’s; Aaa, Aa, or A if rated by Moody’s, or A++, A+, A, or A - if

rated by A.M. Best.. Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(f) Financial test and corporate guarantee for closure. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (ii) of this section:

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements;

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted; and

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ four items specified in paragraph (f)(3) of this section.

* * * * *

8. **Section 264.145(e) and (f)(3) and (5)** are revised to read as follows:

§ 264.145 Financial assurance for post-closure care.

* * * * *

(e) Post-closure insurance. (1) An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance and a copy of the insurance policy to the Director. An owner or operator of a new facility must submit the certificate of insurance to the Director at least 60 days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States.~~ as recognized by the Arkansas Insurance Department; and 2) have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best.. Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(f) Financial test and corporate guarantee for post-closure care. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (ii) of this section:

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.; and

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ four items specified in paragraph (f)(3) of this section.

9. Section 264.147(a)(1), (b)(1) and (f)(3) are revised to read as follows:

§ 264.147 Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Director, or Directors if the facilities are located in more than one state. ~~If requested by a Director, the~~ owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States.~~ as recognized by the Arkansas Insurance Department; and must have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best.. Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, land treatment facility, ~~or~~ disposal miscellaneous unit that is used to manage hazardous waste, or open burn/open detonation unit where soil and/or groundwater contamination has been identified as a result of operation of the unit, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraphs (b) (1), (2), (3), (4), (5), or (6), of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Director, or Directors if the facilities are located in more than one state. ~~If requested by a Director,~~ The owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States,~~ as recognized by the Arkansas Insurance Department; and must have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best.. Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(f) Financial test for liability coverage. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (ii):

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following ~~three~~ four items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by §§ 264.143(f), 264.145(f), 265.143(e), and 265.145(e), and liability coverage, he must submit the letter specified in § 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in § 264.151(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

(4) An owner or operator of a new facility must submit the items specified in paragraph (f)(3) of this section to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ four items specified in paragraph (f)(3) of this section.

SECTION 265 — INTERIM STATUS STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Subsection G – Closure and Post-Closure

10. **Section 265.110(b)** is revised to add new subparagraph (5), to read as follows:

§ 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111 through 265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 265.116 through 265.120 (which concern post-closure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in § 265.228 or § 265.258;

(3) Tank systems that are required under § 265.197 to meet requirements for landfills.

(4) Containment buildings that are required under § 265.1102 to meet the requirement for landfills, and

(5) Open burn/open detonation units where soil and/or groundwater contamination has been identified as a result of operation of the unit.

11. **Section 265.143(d)(1)** and **(e)(3)** are revised to read as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(d) Closure insurance. (1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Director. By the effective date of these regulations the owner or operator must submit to the Director a letter from an insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this paragraph to the owner or operator. Within 90 days after the effective date of these regulations, the owner or operator must submit the certificate of insurance and a copy of the applicable insurance policy to the Director or establish other financial

assurance as specified in this section. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States, as recognized by the Arkansas Insurance Department; and 2) have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best..~~ Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(e) Financial test and corporate guarantee for closure.

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Director:

- (i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f); and
- (ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
- (iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

12. **Section 265.145(d)(1) and (e)(3)** are revised to read as follows:

§ 265.145 Financial assurance for post-closure.

* * * * *

(d) Post-closure insurance. (1) An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance and a copy of the applicable insurance policy to the Director. By the effective date of these regulations the owner or operator must submit to the Director a letter from an insurer stating that the insurer is considering issuance of post-closure insurance conforming to the requirements of this paragraph to the owner or operator. Within 90 days after the effective date of these regulations, the owner or operator must submit the certificate of insurance to the Director or establish other financial assurance as specified in this section. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States, as recognized by the Arkansas Insurance Department; and 2) have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best..~~ Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(e) Financial test and corporate guarantee for post-closure care. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria either of paragraph (e)(1)(i) or (ii) of this section:

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Director:

- (i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f); and
- (ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.; and

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

(5) After the initial submission of items specified in paragraph (e)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ four items specified in paragraph (e)(3) of this section.

* * * * *

13. Section 265.147 (a)(1), (b)(1), and (f)(3) are revised to read as follows:

§ 265.147 Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph. Captive insurance shall not be used to provide such liability coverage under the requirements of this Regulation.

* * * * *

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, ~~or~~ land treatment facility which is used to manage hazardous waste, or open burn/open detonation unit where soil and/or groundwater contamination has been identified as a result of operation of the unit, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraph (b) (1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph. Captive insurance shall not be used to provide such liability coverage under the requirements of this Regulation.

* * * * *

(f) Financial test for liability coverage. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (ii) of this section:

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following ~~three~~ four items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by §§ 264.143(f), 264.145(f), 265.143(e), and 265.145(e), and liability coverage, he must submit the letter specified in § 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in § 264.151(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ four items specified in paragraph (f)(3) of this section.

* * * * *

SECTION 270 — ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

14. Section 270.1(c)(2)(viii) is revised to add new subparagraph (E) to read as follows:

§ 270.1 Purpose and scope of these regulations.

(c) * * * * *

(2) * * * * *

(viii) Universal waste handlers and universal waste transporters (as defined in § 260.10) managing the wastes listed below. These handlers are subject to regulation under § 273.

(A) Batteries as described in § 273.2;

(B) Pesticides as described in § 273.3 of this regulation;

(C) Thermostats as described in § 273.4 of this regulation; ~~and~~

(D) Lamps as described in § 273.5 of this regulation; and

(E) Consumer electronic items as described in § 273.6 of this regulation.

Subsection D – Changes to Permits

15. Section 270.40(b) is revised to read as follows:

§ 270.40 Transfer of permits.

* * * * *

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with § 270.42. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Section 264, Subsection H (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying

with the requirements of that Subsection. The new owner or operator must demonstrate compliance with Subsection H requirements ~~within six months of~~ not later than the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subsection H, the Director shall notify the old owner or operator that he or she no longer needs to comply with Subsection H as of the date of demonstration.

* * * * *

SECTION 273 — STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

Subsection A – General

16. **Section 273.1** is revised to add new subparagraph (a)(5) to read as follows:

§ 273.1 Scope.

- (a) This part establishes requirements for managing the following:
 - (1) Batteries as described in § 273.2;
 - (2) Pesticides as described in § 273.3;
 - (3) Thermostats as described in § 273.4; ~~and~~
 - (4) Lamps as described in § 273.5; and
 - (5) Consumer electronic items as described in § 273.6.

17. **Section 273** is revised to add new **Section 273.6** to read as follows:

§ 273.6 Applicability – Consumer electronic items.

(a) Consumer electronic items covered under this Section 273. The requirements of this section apply to persons managing consumer electronic items as described in § 273.9, except those listed in paragraph (b) of this section.

(b) Consumer electronic items not covered under this Section 273. The requirements of this section do not apply to persons managing the following consumer electronic items:

(1) Consumer electronic items that are not yet wastes under section 261 of this regulation as provided in paragraph (c) of this section.

(2) Consumer electronic items that are not hazardous waste. A consumer electronic item is a hazardous waste if it exhibits one or more of the characteristics identified in section 261, subsection C of this regulation.

(c) Generation of consumer electronic wastes.

(1) A used consumer electronic item becomes a waste on the date it is discarded.

(2) An unused consumer electronic item becomes a waste on the date the handler decides to discard it.

18. **Section 273.9** is revised to add the following definitions, in alphabetical order:

§ 273.9 Definitions.

* * * * *

“Cathode ray tube” or “CRT” means a vacuum tube, composed primarily of glass, which is the video display component of a television or computer monitor. An intact CRT means a CRT remaining inside the monitor whose vacuum has not been released. A broken CRT means glass removed from the monitor after the vacuum has been released.

“Consumer electronic item” means an electronic item containing an intact or broken cathode ray tube, (e.g., television, computer monitor, or other cathode ray tube monitor or display device), personal

computer or computer component, audio and/or stereo player, videocassette recorder/player, digital videodisk (DVD) recorder/player, video camera, telephone, facsimile or copying machine, cellular telephone, wireless paging device, or video game console.

* * * * *

“Large Quantity Handler of Universal Waste” means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (~~batteries, pesticides, thermostats, or lamps~~, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

* * * * *

“Small Quantity Handler of Universal Waste” means a universal waste handler (as defined in this section) who does not accumulate more than 5,000 kilograms total of universal waste (~~batteries, pesticides, thermostats or lamps~~, calculated collectively) at any time.

* * * * *

“Universal Waste” means any of the following hazardous wastes that are managed under the universal waste requirements of Section 273 of this regulation:

- (1) Batteries as described in § 273.2;
- (2) Pesticides as described in § 273.3;
- (3) Thermostats as described in § 273.4; ~~and~~
- (4) Lamps as described in § 273.5; and
- (5) Consumer electronic items as described in § 273.6.

19. **Section 273.13** is revised to add new subparagraph (d), to read as follows:

§ 273.13 Waste Management

* * * * *

(d) Consumer electronic items. A small quantity handler of universal waste must manage waste consumer electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any waste consumer electronic item in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the items. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste must immediately clean up and place in a container any CRT that is broken and must place in a container any CRT that shows evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the items and must lack evidence of leakage, spillage or damage that could cause leakage or releases of lead or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste may conduct the following activities as long as cathode ray tubes are not broken, and the casing of battery cells is not breached and remains intact and closed):

(i) sorting consumer electronic items by type;

(ii) mixing consumer electronic item types in one container;

(iii) disassembling consumer electronic items to separate CRTs, batteries, circuit boards, or other components to facilitate the recycling or reclamation of these components;

(4) A small quantity handler of universal waste who disassembles consumer electronic items for the purpose of facilitating the recycling or reclamation of individual components of those items must determine whether those components and/or other solid waste resulting from the activities listed above exhibit a characteristic of hazardous waste identified in § 261, Subsection C.

(i) If the separated component of the consumer electronic items and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Sections 260 through 270. The handler is considered the generator of this hazardous waste and/or other waste and is subject to § 262 of this Regulation.

(ii) If the separated component or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

20. **Section 273.14** is revised to add new subparagraph (f), to read as follows

(f) Universal waste consumer electronic items (i.e., each item), or a container in which the consumer electronic items are contained, must be labeled or marked clearly with any one of the following phrases: “Universal Waste – Consumer Electronic Items”, or “Electronic Wastes,” or “Used Electronic Items;”

21. **Section 273.33** is revised to add new subparagraph (d), to read as follows:

§ 273.33 Waste management.

* * * * *

(d) Consumer electronic items. A large quantity handler of universal waste must manage waste consumer electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any waste consumer electronic item in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the items. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste must immediately clean up and place in a container any CRT that is broken and must place in a container any CRT that shows evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the items and must lack evidence of leakage, spillage or damage that could cause leakage or releases of lead or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste may conduct the following activities as long as cathode ray tubes are not broken and the casing of battery cells is not breached and remains intact and closed):

(i) sorting consumer electronic items by type;

(ii) mixing consumer electronic item types in one container;

(iii) disassembling consumer electronic items to separate CRTs, batteries, circuit boards, or other components to facilitate the recycling or reclamation of these components;

(4) A large quantity handler of universal waste who disassembles consumer electronic items for the purpose of facilitating the recycling or reclamation of individual components of those items must determine whether those components and/or other solid waste resulting from the activities listed above exhibit a characteristic of hazardous waste identified in § 261, Subsection C.

(i) If the separated component of the consumer electronic items and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Sections 260 through 270. The handler is considered the generator of this hazardous waste and/or other waste and is subject to § 262 of this Regulation.

(ii) If the separated component or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

22. **Section 273.34** is revised to add new subparagraph (f), to read as follows

(f) Universal waste consumer electronic items (i.e., each item), or a container in which the consumer electronic items are contained, must be labeled or marked clearly with any one of the following phrases: “Universal Waste – Consumer Electronic Items”, or “Electronic Wastes,” or “Used Electronic Items;”

SECTION 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

23. **Section 279.10** is amended by revising paragraph (i) to read as follows:

§ 279.10 Applicability.

* * * * *

(i) Used oil containing PCBs. ~~In addition to the requirements of this Section, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found at 40 CFR 761.20(e) and Sections 262 and 263 of this regulation.~~ Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this Section unless, because of dilution, it is regulated under 40 CFR Part 761 as a used oil containing PCBs at 50 ppm or greater. PCB-containing used oil subject to the requirements of this Section may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this Section, but is subject to regulation under 40 CFR Part 761. No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this Regulation or 40 CFR Part 761.

24. **Section 279.74** is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

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(b) *On-specification used oil delivery.* A generator, transporter, processor/rerefiner, or burner who first claims that used oil that is to be burned for energy recovery meets the ~~used oil fuel~~ specifications under § 279.11 must keep a record of each shipment of used oil to ~~an on-specification used oil burner~~ the facility to which it delivers the used oil. Records for each shipment must include the following information:

- (1) The name and address of the facility receiving the shipment;
- (2) The quantity of used oil fuel delivered;
- (3) The date of shipment or delivery; and
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under ~~§ 279.11~~ § 279.72(a).

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